

E-FILING

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OCT 23 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

ADR

6 Attorneys for Plaintiff  
7 DOMINIC CONCETTI

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 DOMINIC CONCETTI by his Guardian  
13 Ad Litem, SHARON FRASER,

14 Plaintiff,

15 v.

16 IMPAC FUNDING CORPORATION, a  
17 California corporation, dba IMPAC;  
18 UNIVERSAL MORTGAGE AND  
SALES, INC., a California corporation;  
RAYMOND FLORES, an individual; and  
ERIK S. GONZALES, an individual;

19 Defendants.

20 Case No.

21 C07 05410 JW HRL  
22  
23 COMPLAINT FOR (1) VIOLATIONS OF THE FEDERAL  
TRUTH IN LENDING ACT; (2) VIOLATIONS OF THE FEDERAL  
REAL ESTATE SETTLEMENT  
PROCEDURES ACT; (3) FRAUD;  
(4) BREACH OF FIDUCIARY  
DUTY; (5) VIOLATIONS OF  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200 ET  
SEQ.; (6) NEGLIGENCE; (7)  
UNJUST ENRICHMENT; (8)  
VIOLATION OF THE ELDER  
ABUSE AND DEPENDENT CIVIL  
PROTECTION ACT; AND (9)  
CALIFORNIA CIVIL CODE §  
1750 ET SEQ;

24  
25  
26  
27  
28  
DEMAND FOR JURY TRIAL

1 Plaintiff Dominic Concetti (hereinafter "Plaintiff" or "Mr. Concetti"), through his  
2 Guardian Ad Litem, Sharon Fraser, alleges as follows:

3 **PARTIES**

4 1. Mr. Concetti is an individual that currently resides in Santa Clara, County of  
5 Santa Clara, California. His guardian ad litem, Sharon Fraser, is bringing this suit.

7 2. On information and belief and at all times relevant to this Complaint,  
8 Defendant Raymond Flores (hereinafter "FLORES") was an individual over the age of 18  
9 residing in the State of California and is a real estate salesperson licensed by the State of  
10 California and doing business in the County of Santa Clara.

12 3. On information and belief and at all times relevant to this Complaint,  
13 Defendant IMPAC FUNDING CORPORATION (hereinafter "IMPAC"), was a  
14 corporation organized and existing under the laws of the State of California. IMPAC is in  
15 the business of providing mortgage services doing business in Santa Clara County.

17 4. On information and belief and at all times relevant to this Complaint,  
18 Defendant UNIVERSAL MORTGAGE AND SALES, INC. (hereinafter "UNIVERSAL  
19 MORTGAGE") was a corporation organized and existing under the laws of the State of  
20 California. UNIVERSAL MORTGAGE is in the business of providing mortgage services  
21 and is a licensed real estate broker licensed by the California Department of Real Estate  
22 doing business in Santa Clara County.

24 5. On information and belief and at all times relevant to this Complaint,  
25 Defendant ERIK S. GONZALES ("GONZALES") was an individual over the age of 18  
26 and a real estate broker licensed by the California Department of Real Estate and doing  
27

1 business in Santa Clara County. Plaintiff is informed and believes and thereon alleges  
2 that Defendant GONZALES was at all times material herein the licensed real estate  
3 broker for Defendant UNIVERSAL MORTGAGE.

4 6. As Defendant UNIVERSAL MORTGAGE's licensed real estate broker,  
5 defendant GONZALES was responsible for the supervision and control of activities  
6 requiring a real estate license undertaken by employees of Defendant UNIVERSAL  
7 MORTGAGE.

8 7. For each cause of action alleged herein, Defendant GONZALES is liable for  
9 the unlawful conduct of his employees, who were providing mortgage services under  
10 defendant GONZALES' real estate brokerage license.

11 8. At all relevant times alleged herein, all of the Defendants were agents,  
12 servants and employees of each other. Each Defendant was acting within the scope of  
13 such agency or employment in doing the things herein alleged, or the alleged acts,  
14 omissions and other conduct of each Defendant was subsequently ratified or adopted by  
15 the other Defendants.

16 20 **STATEMENT OF THE CASE**

17 9. This is an egregious and appalling case in which the Defendants exploited,  
18 defrauded and took advantage of Plaintiff, an eighty-four year old man with significantly  
19 impaired vision and hearing, and obvious memory and capacity problems, all in a  
20 reprehensible attempt to deprive Plaintiff of his greatest single asset - his home.

21 10. Defendants contacted Plaintiff and promised to refinance his home at a good  
22

1 interest rate, pay off a few of his debts, and get him a monthly payment he could  
 2 reasonably afford. Instead, Defendants pulled a classic bait and switch, and had Plaintiff  
 3 sign loan documents (documents he could not read because of his vision problems) for a  
 4 terrible loan that, among other things, exceeded the promised interest rate by three percent  
 5 and left Plaintiff with a monthly payment that actually exceeded Plaintiff's entire  
 6 monthly income by nearly \$400.

7  
 8 11. Defendants knowingly and intentionally preyed of Plaintiff's age, vision,  
 9 hearing and capacity issues, and now Plaintiff is in a loan he can't possibly afford and is  
 10 facing the likelihood of losing the house he has called home for nearly fifty years.

11  
 12  
 13 **JURISDICTION**  
 14

15 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
 16 because Plaintiff has alleged causes of action for violations of the Federal Truth in  
 17 Lending Act, pursuant to 15 U.S.C. § 1601, *et seq.*, and the Federal Real Estate  
 18 Settlement Procedures Act, pursuant to 12 U.S.C. § 2601, *et seq.*  
 19

20 13. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 to  
 21 hear and determine Plaintiff's state law claims because those claims are related to  
 22 Plaintiff's federal claims, arise out of a common nucleus of operative facts and form part  
 23 of the same case or controversy under Article III of the United States Constitution.  
 24

25 **VENUE**  
 26

27 14. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b) and (c)  
 28 because the Defendants committed each of the wrongful acts alleged herein within this

1 judicial district and reside in this judicial district.

2

3 **INTRA-DISTRICT ASSIGNMENT**

4

5 15. Intra-district assignment in San Jose, California is proper because the  
6 unlawful conduct that gives rise to the alleged claims occurred in Santa Clara County.

7

8 **STATEMENT OF FACTS:**

9

10 16. Mr. Concetti is eighty-four years old; he has macular degeneration and, even  
11 wearing special corrective lenses, his vision is so poor he is unable to read even the largest  
12 print.

13 17. In order to sign his name on a document, he needs someone to hold his hand  
14 in the proper place because he is incapable of seeing the signature line.

16 18. Mr. Concetti has significantly impaired hearing and, even with the  
17 assistance of a hearing aid, he has great difficulty hearing what people say. It is often  
18 necessary for people to repeat themselves several times before Mr. Concetti adequately  
19 hears what they are saying.

21 19. Due to his advancing age and a number of health problems, Mr. Concetti  
22 has obvious memory and capacity issues. Mr. Concetti becomes easily confused and  
23 disoriented and often has difficulty remembering people, events and details from one day  
24 to another.

1       20. Mr. Concetti is, and has been for at least the last two years, incapable of  
2 handling his day to day finances, such as paying his bills, or entering into contracts,  
3 without the assistance and involvement of his daughter, Sharon Fraser.  
4

5       21. On or about August 2006, Defendant Raymond FLORES contacted Mr.  
6 Concetti and informed him that Defendant UNIVERSAL MORTGAGE could refinance  
7 his existing mortgage, obtain cash for his bills, lower his interest rate, and reduce his  
8 monthly payment.  
9

10       22. Mr. Concetti told Defendant FLORES to talk with his daughter, Sharon  
11 Fraser, as she is the one who takes care of his finances.  
12

13       23. Defendant FLORES thereafter met and spoke with Mr. Concetti and his  
14 daughter several times about a new loan. Mr. Concetti and his daughter made it clear that  
15 the payment on any new loan needed to be \$1700 or less and that the rate needed to be  
16 fixed, due to the fact that Mr. Concetti was on a fixed income of \$1863 per month from  
17 Social Security and a pension from a former employer.  
18

19       24. On or about August 2006, Defendant FLORES assured Mr. Concetti and his  
20 daughter that his payments would be \$1700 or less per month with an interest rate of 5%  
21 at Mr. Concetti's home, knowing it was false. Defendant Flores presented two draft sets  
22 of loan documents with an interest rate of 5% and payments less than \$1700 per month to  
23 Sharon Fraser. Based on these representations, Mr. Concetti and his daughter agreed to  
24 use Defendants UNIVERSAL MORTGAGE and Erik GONZALES as their broker.  
25

26       25. On October 11, 2006, Defendant FLORES arrived unannounced at Mr.  
27 Concetti's house. Neither Sharon Fraser nor any other family member of Mr. Concetti's  
28

1 was present. Defendant FLORES told Mr. Concetti he needed to sign all of the loan  
2 documents so he could get his money and close on the new loan.

3       26. Because of his vision problems, Mr. Concetti obviously could not read the  
4 loan documents. Defendant FLORES did not bother adequately explaining documents he  
5 was having Mr. Concetti, but instead spoke quickly in a manner Mr. Concetti did not  
6 understand and simply held Mr. Concetti's hand over the various signature lines and  
7 instructed him to sign his name.

8       27. Moreover, even if Defendant FLORES had explained all of the details set  
9 forth in the loan documents signed by Mr. Concetti, Mr. Concetti likely would not have  
10 remembered any of the details because of his memory and capacity issues.

11       28. Defendant FLORES was aware of all these facts, yet he still had Mr.  
12 Concetti sign the documents without making any attempt to contact Sharon Fraser or any  
13 other family member, despite the fact that Ms. Fraser was present during every other  
14 meeting and telephone call regarding the promised loan.

15       29. After Mr. Concetti signed the loan documents, Defendant FLORES  
16 provided him with only an unsigned copy of the closing documents. Included among the  
17 unsigned documents were multiple copies of the Notice of Right to Cancel required by the  
18 Federal Truth in Lending Act. In addition to being unsigned, the copies of the Notice of  
19 Right to Cancel erroneously identified the date of the transaction as October 10, 2006 and  
20 the expiration of the cancellation right as October 13, 2006.

21       30. The Notice of Right to Cancel documents actually signed by Plaintiff on  
22 October 11, 2006 also erroneously identified the date of the transaction as October 10,  
23

1 2006 and the expiration of the cancellation right as October 13, 2006. However,  
2 Defendants made handwritten changes to the Notice of Right to Cancel document,  
3 changing the date of the transaction from October 10, 2006 to October 11, 2006, and the  
4 expiration of the cancellation right from October 13, 2006 to October 14, 2006.  
5

6 31. In addition, Plaintiff was charged significant fees in connection with the  
7 refinance that appear to have no discernible basis. The majority of the fees were paid to  
8 Defendants UNIVERSAL MORTGAGE, FLORES and GONZALES (hereinafter  
9 collectively referred to as "the Broker Defendants").  
10

11 32. The loan documents signed by Mr. Concetti on October 11, 2006 in no way  
12 resembled the loan Defendant FLORES had promised during his many discussions and  
13 meetings with Mr. Concetti and his daughter.  
14

15 33. The actual loan Defendants got for Mr. Concetti differed from the promised  
16 loan as follows:  
17

- 18 a. Instead of a loan payment of \$1700 per month, Mr. Concetti's monthly  
19 payment was \$2200 – or nearly ***\$350 more than Mr. Concetti's entire  
monthly income;***  
20
- 21 b. Instead of an interest rate of 5%, the rate was 8% and could go up as high as  
22 13% after five years;  
23
- 24 c. The loan was a negative amortization loan, so the \$2200 payment was  
25 insufficient to cover the 8% interest rate, which resulted in unpaid interest  
26 being added to the principal every month;  
27
- 28

- 1                   d. The loan had a 36 month prepayment penalty, which was never mentioned
- 2                   to Mr. Concetti or his daughter; and
- 3                   e. The loan increased the debt on Mr. Concetti's home from \$442,000 to
- 4                   \$528,000 -- an increase of more than \$85,000 - which was never discussed
- 5                   with Mr. Concetti or his daughter.

6  
7                   34. If the foregoing was not bad enough, the Broker Defendants also falsified  
8                   the loan application that was submitted to the lender in order to obtain the above-  
9                   referenced loan.

10  
11                  35. Specifically, the Defendants falsely stated on the application that Mr.  
12                  Concetti was born in 1936 (making him seventy-one years old), when he was actually  
13                  born in 1923 (eighty-three years old at the time). Defendants also falsely stated that the  
14                  existing loans on the property were \$284,000, when they were actually \$442,991. In  
15                  addition, the Defendants indicated that Mr. Concetti's monthly income was \$12,000,  
16                  when his income was fixed at \$1863.

17  
18                  36. The loan application also stated that Mr. Concetti had been the owner and  
19                  operator of Concetti Landscaping for the past 14 years, with monthly income of \$8300.  
20                  Mr. Concetti has never owned or operated any such business.

21  
22                  37. Plaintiff is informed and believes and on that basis alleges that Defendant  
23                  IMPAC failed to discover the falsity of the information contained in the loan application  
24                  because it failed to follow its own internal processes and procedures for verifying  
25                  information contained in a loan application.

1       38. Despite the foregoing materially false statements contained on the loan  
2 application, and despite Defendant IMPAC's failure to discover the falsity of said  
3 statements, Plaintiff is informed and believes and on that basis alleges that Defendant  
4 IMPAC initially *denied* the loan. The Broker Defendants, however, were undeterred and  
5 responded by further embellishing the facts.

6       39. First, Plaintiff is informed and believes and on that basis alleges that the  
7 Broker Defendants told Defendant IMPAC that Mr. Concetti was also employed by the  
8 City of San Jose as a crossing guard. Defendant IMPAC thereafter failed to adequately  
9 verify the Broker Defendants' claim, for if Defendant IMPAC had done so, they would  
10 have learned that Mr. Concetti stopped working as a crossing guard five years earlier, in  
11 2001.

12       40. The Broker Defendants then obtained and submitted three letters purporting  
13 to verify Mr. Concetti's ownership of Concetti Landscaping and the income derived  
14 therefrom. The letters can be described as follows:

- 15           a. A letter from FP Vargas dated October 1, 2006 thanking Mr. Concetti of  
16 Concetti Landscaping for performing landscaping services at his San Jose  
17 and Gilroy offices over the past three years. The letter also says he intends  
18 to continue using Concetti Landscaping indefinitely;
- 19           b. A letter from Roberto Dorantes from Dorantes Flooring stating that Concetti  
20 Landscaping has been his landscaper for the past five years and that they  
21 have been very satisfied with his work; and
- 22
- 23
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c. A second letter from FP Vargas on his company letterhead, stating that he has prepared Mr. Concetti's personal taxes and the business taxes for Concetti Landscaping for the past three years and that they have filed the requisite Profit and Loss Statements for the tax years 2003, 2004 and 2005.

41. All three of the foregoing letters were false and fraudulent, and the Broker Defendants knew they were false and fraudulent when they submitted them to the lender in conjunction with Mr. Concetti's loan. Mr. Concetti has never met Mr. Vargas or Mr. Dorantes, and he certainly has never done their landscaping, nor anyone else's.

42. Unfortunately, Defendant IMPAC again did not discover that the letters were fraudulent, as Plaintiff is informed and believes and on that basis alleges that Defendant IMPAC failed to adequately verify the information submitted by the Broker Defendants, and failed to follow its own internal processes and procedures with respect to verifying information submitted by brokers.

43. Based on all of the false information set forth above, Defendant IMPAC approved the loan. The Defendants therefore succeeded in putting Mr. Concetti into a loan that he could not possibly afford, and he is now in a position where he cannot make the monthly payments, and is faced with losing the home he has owned for nearly 50 years.

44. Plaintiff is now forced to bring the instant action to recover damages caused by the blatantly inappropriate conduct and statutory violations engaged in by Defendants, and to prevent Defendants from doing the same thing to other unsuspecting individuals.

## Injuries

45. Defendants have illegally gained fees and profit from Plaintiff as described herein. Therefore, Plaintiff is entitled to restitution.

46. Plaintiff paid finance charges and interest payments to Defendants based on this illegal and improper loan.

47. Unless enjoined, Defendants will continue to engage in the unlawful acts described above. Plaintiff continues to suffer irreparable harm from Defendants' unlawful acts unless relief is provided by this court. Accordingly, Plaintiff is entitled to injunctive relief.

48. Defendants acted intentionally, maliciously, wantonly, recklessly and in bad faith as described herein. Accordingly, Plaintiff is entitled to punitive damages.

**FIRST CAUSE OF ACTION**

**Violations of the Federal Truth In Lending Act;  
Federal Home Ownership & Equity Protections Act, 15 U.S.C. § 1601, *et seq.*  
(Against Defendant Impac)**

49. Mr. Concetti hereby realleges and incorporates by reference the allegations of paragraphs 1 through 48 as though fully set forth herein.

50. At the time of subject transaction, Defendant Impac acted as a creditor who regularly engaged in the making of mortgage loans, payable by agreement in installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.

51. Accordingly, Defendant is subject to the Truth in Lending Act ("TILA") 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, Federal Reserve Board

1 Regulation Z, 12 C.F.R. § 226.

2 52. As a result of the subject transaction, Defendant Impac acquired an interest  
 3 in Mr. Concetti's home that secures the payment or performance of an obligation.  
 4

5 53. Defendant Impac provided Plaintiff with unsigned copies of the Notice of  
 6 Right to Cancel required by the Federal Truth in Lending Act, which erroneously  
 7 identified the date of the transaction as October 10, 2006 and the expiration of the  
 8 cancellation right as October 13, 2006.  
 9

10 54. Defendant Impac therefore failed to properly and accurately notify Plaintiff  
 11 of his right to rescind the transaction, in violation of 15 U.S.C. § 1635(a) and 12 C.F.R. §§  
 12 226.15(b) and 226.23(b).

13 55. In accordance with the Federal Truth in Lending Act, Plaintiff is entitled to:

- 14 a. Rescission of the loan held by Defendant Impac pursuant to U.S.C. §§ 1635,  
 15 1641(d)(1) and 12 C.F.R. § 226.23;
- 16 b. The return of any money or property that has been given to anyone in  
 17 connection with the transaction and the termination of Defendant Impac's  
 18 security interest in the property;
- 19 c. Actual damages in an amount to be determined at trial;
- 20 d. Statutory damages as provided by 15 U.S.C. § 1640; and Costs and  
 21 disbursements.

22 WHEREFORE, Plaintiff prays for relief as set forth below.  
 23

24 **SECOND CAUSE OF ACTION**  
 25 **Violations of the Federal Real Estate Settlement Procedures Act,**

12 U.S.C. § 2601, *et seq.*  
(Against All Defendants)

3 56. Mr. Concetti hereby realleges and incorporates by reference the allegations  
4 of paragraphs 1 through 55 as though fully set forth herein.

5 57. On information and belief, the Defendants make or invest in residential real  
6 estate loans aggregating more than \$1,000,000 per year.

7 58. Accordingly, Defendants are subject to the Real Estate Settlement  
8 Procedures Act ("RESPA"), 12 U.S.C. § 2601, *et seq.*

9 59. The Defendants have violated numerous provisions of RESPA, including:

10 a. Assessing fees and kickbacks pursuant to an agreement or understanding,  
11 oral or otherwise, that business incident to or a part of a real estate  
12 settlement service involving the mortgage on Plaintiff's home should be  
13 referred to any person, in violation of 12 U.S.C. § 2607(a);

14 b. Accepting any portion, split, or percentage of any charge made or received  
15 for the rendering of a real estate settlement service in connection with a  
16 transaction involving the mortgage on Plaintiff's home other than for  
17 services actually performed, in violation of 12 U.S.C. § 2607(b).

18 60. Defendants violated RESPA by either paying or receiving an excessive or  
19 unearned fee.

20 61. On information and belief, all such violations of RESPA were made by the  
21 Defendants with intentional disregard of the statutory requirements.

22 62. On information and belief, all such violations of RESPA were made by the  
23 Defendants as part of a pattern or practice of noncompliance with the statute.

63. In accordance with RESPA, the Defendants are liable for:

- Actual damages in an amount to be determined at trial;
- Attorney costs and fees;
- Statutory damages, as provided by 12 U.S.C. §§ 2605, 2607 and 2609; and
- Costs and disbursements.

WHEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CAUSE OF ACTION**  
**(Fraud Against Defendants UNIVERSAL MORTGAGE,  
FLORES AND GONZALES)**

64. Mr. Concetti hereby realleges and incorporates by reference the allegations of paragraphs 1 through 63 as though fully set forth herein.

65. Defendants made false representations of fact, failed to disclose information and suppressed information concerning the true nature and effect of documents they had Plaintiff execute to accomplish their fraudulent and predatory loan.

66. The Broker Defendants fraudulently and knowingly induced Mr. Concetti to enter into the October 23, 2006 mortgage transaction by making intentional misrepresentations, failing to provide material information and/or deliberately concealing material information. As more fully alleged above, Defendant FLORES, for his own benefit on behalf of Defendants UNIVERSAL MORTGAGE and GONZALES, knowingly and purposely deceived Mr. Concetti and induced him to enter into a ruinous transaction that FLORES knew Mr. Concetti could not repay.

67. Further, Defendant FLORES made numerous misrepresentations to induce

1 Mr. Concetti to enter this transaction, including the assurance that the interest rate would  
2 be 5% and that the payments would be \$1700 or less per month.  
3

4 68. Defendant FLORES also failed to provide Mr. Concetti with clearly  
5 material information, including that the interest rate was actually 8% and could go as high  
6 as 13%, that Mr. Concetti's then existing loan had a prepayment penalty of nearly  
7 \$14,000, that his new loan also had a thirty-six month prepayment penalty, that the new  
8 loan was negatively amortized and that the unpaid interest would be added to the principal  
9 of the loan, and that the new loan increased the debt on Mr. Concetti's property by  
10 \$85,000.  
11

12 69. Defendant FLORES furthered the fraud by intentionally taking advantage of  
13 Mr. Concetti's disabilities and arriving at Mr. Concetti's house unannounced, then having  
14 him sign all the closing documents without even attempting to contact Mr. Concetti's  
15 daughter or another family member.  
16

17 70. Defendant FLORES also took affirmative steps in furtherance of the fraud  
18 by submitting knowingly false material information in Mr. Concetti's loan application and  
19 submitting falsified letters purporting to identify and corroborate Mr. Concetti's  
20 employment and income.  
21

22 71. Plaintiff justifiably relied on Defendants' intentional misrepresentations,  
23 omissions and concealment of material facts and signed the October 11, 2006 loan  
24 documents and obtained the fraudulent and predatory loan.  
25

26 72. Mr. Concetti has incurred and continues to incur substantial damages as a  
27 direct and proximate result of his justifiable reliance in entering into a transaction with  
28

Defendants based on Defendants' intentional misrepresentations, omissions and/or concealments.

73. Mr. Concetti is entitled to rescind the loan and equitable restitution.

74. Defendants' conduct was, and is, willful, oppressive and malicious, and done with intent to injure Plaintiff and deprive Plaintiff of his property and legal rights. Plaintiff is therefore entitled to exemplary and punitive damages in an amount sufficient to punish Defendants and deter future wrongful conduct.

WHEREFORE, Plaintiff prays for relief as set forth below:

**FOURTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Against Defendants UNIVERSAL MORTGAGE,  
FLORES AND GONZALES )**

75. Mr. Concetti hereby realleges and incorporates by reference the allegations of paragraphs 1 through 74 as though fully set forth herein.

76. Defendants UNIVERSAL MORTGAGE, GONZALES and FLORES are licensed brokers and salespersons by the California Department of Real Estate. Their conduct is governed by the California Business and Professions Code and the laws of agency. They owe Plaintiff a fiduciary duty to conduct their affairs in a fair, just and equitable manner and to exercise a duty of care and disclosure of all material facts that would affect the Plaintiff's decision making. Defendants also have a duty to be fair and equitable in their dealings with Plaintiff. Defendants breached those duties to Plaintiff when they made misrepresentations to him.

77. Defendants FLORES, UNIVERSAL MORTAGE AND GONZALES gained the trust and confidence of Mr. Concetti and his daughter regarding a potential new mortgage by meeting with them and promising certain beneficial terms in the new loan. Defendants violated this trust by providing a loan with terms different than those promised and with a payment exceeding Mr. Concetti's entire monthly income by more than \$350.

78. This breach of fiduciary duty was the actual and proximate cause of all of Mr. Conchetti's damages arising from this transaction.

79. Defendants' breach of fiduciary duty was, and is, willful, oppressive and malicious, and done with intent to injure Plaintiff and deprive Plaintiff of his property and legal rights. Plaintiff is therefore entitled to exemplary and punitive damages in an amount sufficient to punish Defendants and deter future wrongful conduct.

WHEREFORE, Plaintiff prays for relief as set forth below.

## FIFTH CAUSE OF ACTION

**Violation of California Business and Professions Code § 17200, *et seq.*  
(Against All Defendants)**

80. Mr. Concetti hereby realleges and incorporates by reference the allegations of paragraphs 1 through 79 as though fully set forth herein.

81. Plaintiff alleges that Defendants engaged in numerous acts and/or practices of unfair competition within the state of California in violation of Business and Professions Code § 17200, *et seq.* These acts or practices include without limitation the following:

a. Offering and making a loan to the Plaintiff, while failing to take into

- 1 account or disregarding his ability to pay back such loan;
- 2 b. Misrepresenting to Plaintiff and his daughter the terms of the loan Plaintiff
- 3 was actually agreeing to;
- 4 c. Falsifying information in loan applications of Plaintiff, without his
- 5 knowledge or consent; and
- 6 d. Violating the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*; the Federal
- 7 Real Estate Procedures Act, 12 U.S.C. § 2601, *et seq.*; the Consumers Legal
- 8 Remedies Act, California Civil Code § 1750 *et seq.*; or any other applicable
- 9 statute.

10 82. The above-described unlawful, unfair and fraudulent business practices

11 present an ongoing threat of injury to Plaintiff. Plaintiff continues to be financially

12 harmed by such conduct and, unless it is restrained, Defendants, and each of them, will

13 continue to engage in such conduct.

14 83. Pursuant to California Business and Professions Code § 17203 and similar

15 state statutes, Plaintiff is entitled to an order of this Court enjoining Defendants, and each

16 of them, from continuing to engage in unfair competition as defined in Business and

17 Professions Code § 17200 in the State of California and similar statutes of sister-states.

18 Plaintiff will be irreparably harmed if such an order is not granted.

19 84. Plaintiff has been injured by Defendants' conduct and is entitled to

20 restitution and disgorgement of profits realized by Defendants, and each of them, as a

21 result of their unfair competition as defined in Business and Professions Code § 17200, *et*

22 *seq.*

1  
2 WHEREFORE, Plaintiff prays for relief as set forth below.  
3  
4

**SIXTH CAUSE OF ACTION**

**Negligence  
(Against All Defendants)**

5  
6 85. Mr. Concetti hereby realleges and incorporates by reference the allegations  
7 of paragraphs 1 through 84 as though fully set forth herein.  
8

9 86. Each Defendant owed a duty of care to Mr. Concetti to exercise reasonable  
10 care with respect to the solicitation, negotiation, processing and finalization of the  
11 refinance loan agreement. Defendants UNIVERSAL MORTGAGE, FLORES and  
12 GONZALES further owed a special duty of care as a specialist with respect to mortgage  
13 brokering services. Among other things, Defendants owed a duty to comply with all  
14 statutory requirements, including, but not limited to, TILA and RESPA. Defendants  
15 breached their duties of care to Mr. Concetti and failed to exercise reasonable care and  
16 skill in performing their mortgage brokering and lending services by failing to, among  
17 other things, thoroughly explain the terms of the refinance transaction and loan agreement,  
18 ensure that Mr. Concetti understood the terms of the refinance transaction and loan  
19 agreement, disclose the total and true character of the fees that would be charged to Mr.  
20 Concetti, submit truthful financial information, evaluate and confirm the accuracy of such  
21 financial information prior to closing.  
22

23 87. Defendant IMPAC also owed a duty of care to Mr. Concetti to exercise  
24 reasonable care in verifying the information contained in the loan application and  
25 supporting documentation submitted by the broker. Defendant IMPAC breached their  
26  
27  
28

1 duty of care by not adequately verifying said information and by failing to follow their  
2 own internal processes and procedures for doing so.

3  
4 88. As a proximate result of Defendants' negligence and other breaches of  
5 fiduciary duty as alleged herein, Mr. Concetti entered into a loan he could not afford on  
6 undisclosed terms, and in doing so repaid an existing loan that contained prepayment  
7 penalty clauses in the amount of \$13,585, and has suffered and will continue to suffer  
8 damages in an amount to be proven at trial.  
9

10.  
11 WHEREFORE, Plaintiff prays for relief as set forth below.

12  
13 **SEVENTH CAUSE OF ACTION**  
14 **Unjust Enrichment**  
15 **(Against All Defendants)**

16 89. Mr. Concetti hereby realleges and incorporates by reference the allegations  
17 of paragraphs 1 through 89 as though fully set forth herein.

18 90. By their wrongful acts and omissions, Defendants were unjustly enriched at  
19 the expense of Plaintiff.

20 91. Plaintiff is entitled to restitution from Defendants and disgorgement of all  
21 profits, benefits and other compensation obtained by Defendants through their wrongful  
22 conduct.  
23

24  
25 WHEREFORE, Plaintiff prays for relief as set forth below.

26  
27 **EIGHTH CAUSE OF ACTION**  
28 **Violation of the Elder Abuse and Dependent Civil Protection Act**  
29 **(Against all Defendants)**

1       92. Mr. Concetti hereby realleges and incorporates by reference the allegations  
 2 of paragraphs 1 through 91 as though fully set forth herein.

3       93. Mr. Concetti resides in this state and has physical and mental limitations  
 4 that restrict his ability to carry out normal activities or to protect his or her rights. Further  
 5 Mr. Concetti's physical or mental abilities have diminished because of age. Consequently,  
 6 Mr. Concetti's is a "dependent adult" within the meaning of Welfare and Institutions Code  
 7 § 15610.23.

8       94. The Defendants committed "financial abuse" within the meaning of Welfare  
 9 and Institutions Code § 15610.30 in that they took and retained, or assisted in taking and  
 10 retaining Mr. Concetti's personal property for a wrongful use or with intent to defraud, or  
 11 both. Defendant FLORES knowingly and intentionally made misrepresentations  
 12 regarding the financial aspects of the transaction. Defendants IMPAC, UNIVERSAL, and  
 13 GONZALES are imputed as a result of their agency relationship with Defendant FLORES  
 14 and each other, and by their failure to adequately follow procedures in verifying Mr.  
 15 Concetti's employment status with the City of San Jose, the existence of Concetti  
 16 Landscaping, Mr. Concetti's age, social security number, his income and his tax status.

17       95. The Defendants acted in bad faith in committing the aforementioned acts of  
 18 financial abuse because they knew or should have known that Mr. Concetti was unaware  
 19 of the nature of the transaction he was entering, given Defendants' misrepresentations,  
 20 improper disclosures and falsifications, and in light Mr. Concetti's advanced age, level of  
 21 sophistication, and physical and mental limitations.

22       96. The Defendants conduct and misrepresentations were fraudulent, reckless  
 23

1 and done with malice.

2 97. The Defendants conduct proximately caused Mr. Concetti to suffer pain,  
 3 suffering and emotional distress.  
 4

5 98. Mr. Concetti is entitled to recover reasonable attorneys fees and costs  
 6 pursuant to Welfare and Institutions Code § 15657.5 in that the defendants were guilty of  
 7 recklessness, oppression, fraud or malice in the commission of the aforementioned abuse.  
 8

9  
 10 WHEREFORE, Plaintiff prays for relief as set forth below.

11 **NINTH CAUSE OF ACTION**  
 12 **Violation of California's Consumer Legal Remedies Act**  
 13 **Civil Code § 1750, *et seq.***  
 14 **(Against all Defendants)**

15 99. Mr. Concetti hereby realleges and incorporates by reference the allegations  
 16 of paragraphs 1 through 98 as though fully set forth herein.

17 100. By their wrongful conduct as alleged herein, Defendants created, engaged in  
 18 and/or participated in unfair acts or practices in violation of the Consumers Legal  
 19 Remedies Act. California Civil Code § 1750, *et seq.*

20 101. By their conduct, Defendants engaged in unfair or deceptive acts or  
 21 practices in transactions intended to result in the sale of goods or services in violation of  
 22 California Civil Code § 1770, including but not limited to: ●

- 23
- 24 a. Representing that their good and services have characteristics, uses or  
 25 benefits which they do not have, in violation of California Civil Code §  
 26 1770(a)(5);
  - 27 b. Representing that the transaction confers or involves rights, remedies or

obligations which it does not, in violation of California Civil Code § 1770(a)(14);

- c. Representing that the subject of the transaction has been supplied in accordance with a previous representation when it has not, in violation of California Civil Code § 1770(a)(16); and
  - d. Inserting an unconscionable provision in the contract, in violation of California Civil Code § 1770 (a)(19).

102. As a result of these unfair and deceptive practices, Defendants have been unjustly enriched at Mr. Concetti's expense in an amount not yet ascertained. Mr. Concetti is entitled to equitable restitution from Defendants.

103. Defendants acted willfully and maliciously in engaging in the above described acts. Accordingly, Mr. Concetti is entitled to punitive damages.

104. Mr. Concetti is entitled to recover actual damages and reasonable attorney fees and costs pursuant to California Civil Code section 1780(a)(1) & (d). The amount of such damages cannot be determined at this time.

### PRAYER FOR RELIEF:

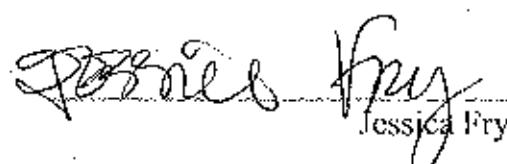
1. Rescission of all the mortgage documents dated October 23, 2006 and any and all agreements or contracts that made up the fraudulent transaction at issue.
  2. An accounting, restitution and/or disgorgement;
  3. Compensatory and general damages;

- 1 4. For restitution of all money and things received by the Defendants from
- 2 Plaintiff;
- 3 5. For punitive damages in an amount sufficient to punish the Defendants and
- 4 to deter the Defendants from engaging in similar conduct at issue;
- 5 6. For statutory damages pursuant to the TILA and RESPA;
- 6 7. For costs and reasonable attorneys' fees;
- 7 8. For prejudgment interest;
- 8 9. For such other relief as the Court deems proper.

11  
12 Respectfully submitted,

13  
14 Dated: October 23 2007

15 LAW FOUNDATION OF SILICON VALLEY

16   
17 Jessica Fry

18   
19 Kerstin Arusha

20  
21 Attorneys for Plaintiff

22  
23 DOMINIC CONCETTI

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25  
26 / / /

27 / / /

28

1 **JURY DEMAND**

2 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests  
3 a trial by jury as to each and every claim for which he is so entitled.  
4

5 Dated: October 23, 2007

LAW FOUNDATION OF SILICON VALLEY

6  
7   
8 Jessica Fry  
9

10   
11 Kerstin Arusha  
12

13 Attorneys for Plaintiff  
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15 DOMINIC CONCETTI  
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